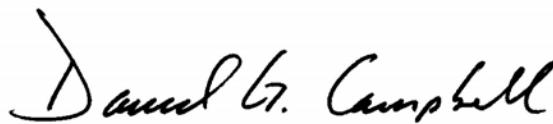


1 Plaintiff has also filed a request for certification of appeal under 28 U.S.C. § 1292(b),
2 asking the Court to certify for appeal the Court's decision to allow Defendants to withdraw
3 admissions. Dkt. #73; *see* Dkt. #70. Section 1292(b) states that a district court may
4 designate an otherwise unappealable civil action as subject to appeal if "the order involves
5 a question of law as to which there is substantial ground for difference of opinion" and "an
6 immediate appeal from the order may materially advance the ultimate termination of the
7 litigation." 28 U.S.C. § 1292(b). The Court will deny Plaintiff's request. The Court had
8 discretion to permit the withdrawal of admissions, provided the Court addressed the two-
9 pronged test of Rule 36(b). *See Conlon v. United States*, 474 F.3d 616, 625 (9th Cir. 2007);
10 Fed. R. Civ. P. 36(b). Plaintiff does not dispute that the Court addressed both factors. *See*
11 Dkt. #70. Nor will immediate appeal materially advance the ultimate termination of this
12 litigation.

13 **IT IS ORDERED:**

- 14 1. Plaintiff's motion for sanctions (Dkt. #72) is **denied without prejudice**.
15 Plaintiff may re-file a motion for sanctions seeking the expense incurred in
16 preparing the first motion for summary judgment (Dkt. #51) after the Court has
17 ruled on the forthcoming motions for summary judgment.
- 18 2. Plaintiff's request for certification of appeal under 28 U.S.C. § 1292(b) (Dkt.
19 #73) is **denied**.

20 DATED this 19th day of June, 2009.

21
22 

23 _____
24 David G. Campbell
25 United States District Judge
26
27
28